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IN THE

Supreme Court of the United States

October Term, 1988

NICHOLAS MARINO,

Petitioner,

-against-

UNITED STATES OF AMERICA,

Respondent.

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITIONER'S PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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INTRODUCTION

Pursuant to Rule 22.6 of the Rules of the United States Supreme Court, Nicholas Marino submits this supplemental brief in support of his petition for a writ of certiorari.

ARGUMENT

In *United States v. Fusco*, 869 F.2d 1048 (7th Cir. 1989), the Court implicitly joined the Second Circuit in holding that proof of mere government solicitation is sufficient to entitle a defendant to an entrapment charge. In reversing a conviction for failure to give the jury an entrapment charge, the Court stated: "A jury can conclude that the government induced the illegal activity only if there is some evidence that defendant would not have committed the crime had the particular lure the government used not existed." 869 F.2d at 1053.

Plainly, proof of government solicitation meets this test. Thus, we can confidently assert that two Circuit Courts of Appeals now disagree with the holding of the Third Circuit.

CONCLUSION

For the foregoing reasons, together with those urged in our initial petition, a writ of certiorari should issue to review the judgment of the United States Court of Appeals for the Third Circuit.

Respectfully submitted,

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